

LEGADMINMAN

CHAPTER 15

DEPENDENT SUPPORT AND PATERNITY

	<u>PARAGRAPH</u>	<u>PAGE</u>
SCOPE. . . . .	15000	15-3
INFORMATION AND POLICY ON SUPPORT OF DEPENDENTS. . . .	15001	15-3
SUPPORT STANDARDS. . . . .	15002	15-4
ALIMONY AND CHILD SUPPORT. . . . .	15003	15-6
COMPLAINTS OF NONSUPPORT AND INSUFFICIENT SUPPORT OF DEPENDENTS . . . . .	15004	15-7
DETERMINATION OF PATERNITY AND SUPPORT OF ILLEGITIMATE CHILDREN . . . . .	15005	15-8
GARNISHMENT AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS. . . . .	15006	15-10
INVOLUNTARY CHILD AND SPOUSAL SUPPORT ALLOTMENTS . . .	15007	15-10
UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT. . .	15008	15-10
FOREIGN DIVORCES AND DEPENDENT BENEFITS. . . . .	15009	15-11

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### CHAPTER 15

#### DEPENDENT SUPPORT AND PATERNITY

15000. SCOPE. This chapter includes provisions for Marine Corps implementation of Department of the Navy policy contained in 32 C.F.R. § 733 and 734 regarding the following: support of dependents of Marines, paternity complaints, garnishment of pay or enforcement of both child and spousal support obligations (including involuntary child and spousal support allotments), and direct payments of retirement pay to former spouses of retired members. Also, this chapter contains information and policy on foreign divorces and dependent benefits. This chapter contains punitive provisions. A violation of these provisions is separately punishable as a violation of a lawful general regulation under Article 92, UCMJ.

#### 15001. INFORMATION AND POLICY ON SUPPORT OF DEPENDENTS

1. The Marine Corps will not be a haven for personnel who disregard or evade their obligations to their families. All Marines are expected to provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so tends to bring discredit on the Marine Corps and, therefore, is a proper subject of command consideration for initiation of administrative or disciplinary action.

2. Marines have a legal and moral obligation to support their spouses and families. What is adequate and reasonably sufficient support is a complex and an individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. However, outside a court decision, salient factors that should be considered are the pay of the Marine; any other private income or resources of both the Marine and the dependents; the cost of necessities and everyday living expenses; financial obligations of the dependents; and the expenses and other financial obligations of the Marine in relation to the Marine's income.

3. The Marine Corps does not and cannot act as a court in these matters. The amount of support to be provided for dependents should either be established by a written agreement between the parties or adjudicated in civil court. Nevertheless, because family and support issues are inextricably intertwined with readiness, morale, discipline, and the reputation of the service, experience has shown that mandatory support standards are needed pending a court order or written agreement between the parties.

4. Written support agreements are available from local legal assistance offices.

5. When a Marine desires to have a parent declared a dependent, the Marine should be afforded an opportunity to submit a dependency application (NAVMC 10922) per MCO P1751.3E.

6. Entitlement of members to basic allowance for housing (BAH) on behalf of dependents is provided by statute. No Marine should be denied the right to submit a claim or application for BAH, nor should any command refuse or fail to forward any such claim or application. However, failure to support a dependent on whose behalf BAH is being received will result in non-entitlement to BAH and recoupment for periods of nonsupport or inadequate support. Further, any Marine or dependent that obtains BAH or other allowance through fraudulent means is subject to criminal prosecution.

7. Failure of Marines to comply with a financial support order or related provision of a court order, or meet their support obligation pursuant to this regulation, may be the basis for a lawful order from a commanding officer to comply with such provision.

8. Marines will not violate any of the following:

- a. The financial support provision of a court order;
- b. The financial support provision of a written financial support agreement in the absence of a court order; or
- c. The financial support requirements of the Marine Corps support standards contained in this chapter, in the absence of a contrary court order, valid waiver of support, or written financial support agreement.

9. Failure to comply with the support requirements mandated by this regulation shall constitute a violation of a punitive lawful general order and may be punished under the UCMJ. Commanding officers are responsible for the enforcement of this paragraph. A member cannot fall into arrears without violating this regulation. A member who falls into arrears by violating any provisions of this regulation may be punished accordingly. However, resort to the UCMJ to enforce support obligations **should be used sparingly**. Punishment in such instances is based on failure to provide financial support when due, not on failure to pay arrearages.

#### 15002. SUPPORT STANDARDS

1. In the absence of a court order or a written agreement between the parties as to an amount of support to be furnished by the Marine, the following shall apply to establish interim support requirements. Note that gross pay is defined as basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence.

## 2. Single family

a. For a single family living in Government housing (civilian spouse): interim support shall be \$200.00 per supported person, up to a maximum of 1/3 gross pay, per month.

b. For a single family not living in Government housing (civilian spouse): interim support shall be either \$200.00 per supported family member, or BAH at the "with dependents" rate, whichever is greater, up to a maximum of 1/3 gross pay, per month.

3. Multiple families (not including a spouse in the armed forces): interim support for each family member shall be either \$200.00 per supported family member, or the pro rata share of BAH at the "with dependents" rate, whichever is greater, up to a maximum of 1/3 gross pay, per month.

## 4. Both spouses in the armed forces

a. No children of the marriage: no support obligation, regardless of any disparities in pay grade.

b. All the children of the marriage in the custody of one spouse: interim support shall be either \$200.00 per supported child, or BAH at the "with dependents" rate, whichever is greater, up to a maximum of 1/3 gross pay, per month.

c. If custody of children of the marriage is divided between the two parents: interim support shall be either \$200.00 per supported family member, or the pro rata share of BAH at the "with dependents" rate, whichever is greater, up to a maximum of 1/3 gross pay, per month.

5. Support amounts required pursuant to this chapter will be paid until a court order or written agreement is obtained.

## 6. Form and timing of financial support payments

a. Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made in one of the following ways:

- (1) Check
- (2) Money order
- (3) Electronic transfer
- (4) Voluntary allotment
- (5) Cash

(6) Involuntary allotment

(7) Garnishment

b. As an exception to paragraph 15002.6a, a commanding officer may direct compliance with the financial support requirements of this regulation by making in-kind financial support. For example, paying non-Government housing expenses on behalf of family members, automobile loans, or charge accounts.

#### 15003. ALIMONY AND CHILD SUPPORT

1. Dependents for whom BAH or other allowances are payable are defined by law. For purposes of qualifying for BAH, medical care, or other benefits, a former spouse is not a dependent even though alimony has been decreed. Marines are expected to comply with the terms of court orders which adjudge alimony payments (even though BAH is not payable) until the responsibility for compliance is terminated by a court of competent jurisdiction; a written agreement between the persons concerned; relinquishment by the former spouse in writing; or the waiver of the support requirement is granted by the general court-martial (GCM) authority in writing.

2. If the decree is silent as to alimony payments, it is presumed that the court did not intend such payments.

3. When a valid court order exists and the Marine concerned is financially unable to comply, the Marine will be advised that noncompliance with the terms of that order renders the Marine liable to further civil court action.

4. The duty of Marines to support their minor children is not terminated by desertion or other misconduct on the part of the Marine's spouse. Similarly, the obligation to support a child or children is not eliminated or reduced by the dissolution of the marriage through divorce, unless a judicial decree or order specifically negates the obligation of child support. The fact that a divorce decree is silent relative to support of minor children, or does not mention a child or children, will not be interpreted by command authorities as relieving the Marine of the inherent obligation to provide support for the child or children of the marriage.

5. A commanding officer may consider releasing a Marine under his/her command from the specific requirements of this regulation in the situations described below. A commanding officer may reconsider any prior decision made by himself/herself or by a prior commanding officer:

a. When the Marine cannot determine the whereabouts and welfare of the child concerned;

b. When it is apparent that the person requesting support for the child does not have physical custody of the child;

c. When the Marine has been the victim of a substantiated instance of physical abuse (this section applies only to a requirement to support a spouse, not dependent children. Commanding officers are strongly encouraged to consult the installation family counseling center concerning such issues. In addition, commanders should exercise extreme caution in denying dependent support in cases where the servicemember is also a perpetrator of spousal abuse.); or

d. The dependent is in jail.

6. All command directed support waivers shall be in writing and a copy shall be provided to the disenfranchised family member by the command. The command shall also retain a copy. Alleged verbal support waivers shall be given no force or effect.

7. The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parent. A Marine who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support, once adopted, for such child during its minority.

15004. COMPLAINTS OF NONSUPPORT AND INSUFFICIENT SUPPORT OF DEPENDENTS

1. All complaints alleging nonsupport or insufficient support of dependents will be promptly acknowledged and the complainant shall be informed of the action taken. In the absence of extraordinary circumstances, the commanding officer will respond, in writing, to allegations of nonsupport within 5 working days. If the commanding officer is unable to respond within 5 working days, the commander shall note the reason why.

2. Upon receipt of a complaint alleging that a Marine is not adequately supporting lawful dependents, the Marine will be interviewed and informed of the policy of the Marine Corps concerning support of dependents. Since this regulation provides a basis for ordering a Marine to take -- or refrain from taking -- certain actions (e.g., to initiate a voluntary allotment in response to violations of this regulation), an Article 31, UCMJ, rights advisement should precede any questioning. In the absence of a determination by a civil court or a mutual written agreement of the parties, the Marine will be advised of the support standards contained herein. The Marine shall be encouraged to consult with a judge advocate. Marines will be informed that their Marine Corps career may be in jeopardy if they do not take satisfactory action; that they may become ineligible to reenlist or extend enlistment; and that they may be subject to

administrative or disciplinary action which could result in separation from the Marine Corps.

3. The commander will advise the Marine of the action to be taken. If, in view of the evidence accumulated during the investigation, the commander determines the complaint is valid and that the Marine has not satisfactorily provided support to dependents, the commanding officer shall determine the content of orders or warnings to be given to the Marine as well as the action, if any, to be taken against the Marine based on any past or continuing violation of this regulation or applicable laws.

4. The commanding officer may request the GCM authority to waive support for a spouse (but not a child) on the basis of evidence of desertion by the spouse without cause, or infidelity on the part of the spouse. If the Marine contends that there are legitimate grounds for a waiver of support for the spouse, the commanding officer shall forward such evidence via the chain of command to the GCM authority. Prior to making the request to the GCM authority, the command shall make reasonable efforts to obtain a response from the family member to be disenfranchised. The family member's response, or the circumstances surrounding the command's inability to obtain a response, shall be provided to the GCM authority prior to granting any support waiver. In determining the appropriateness of granting a waiver of support on the basis of infidelity, commanders may consider all pertinent facts and circumstances, including any evidence provided by the family member of infidelity of the servicemember.

5. A support waiver may be granted when the GCM authority concludes that the infidelity or desertion without cause are established by a preponderance of the evidence and waiver is otherwise appropriate. In determining whether to grant a support waiver, the GCM authority may consider any reliable evidence including, but not necessarily limited to, the following: affidavits of the Marine, relatives, or other witnesses; admissions of the spouse, including verbal and written statements or letters written by the spouse to the Marine or other persons; pertinent photographs or court orders; and admissions by the person with whom the spouse allegedly had sexual liaisons. Witness statements should ordinarily state facts that were personally observed. Statements that merely state a conclusion without providing the personal observations on which the conclusion is based are generally unpersuasive.

6. The request for waiver of support should be submitted to the GCM authority with a complete statement of the facts, substantiating evidence, and comments or recommendations of the commander.

15005. DETERMINATION OF PATERNITY AND SUPPORT OF ILLEGITIMATE CHILDREN

1. Normally, any order or decree that specifies the obligation to render support for illegitimate children will include a determination of paternity of such children. Note, however, Marines are not relieved of providing support under this regulation until a decision to grant the request for waiver of support has been made by the GCM authority. Some jurisdictions provide for determinations of the legal obligation to support illegitimate children without determination of paternity. Either type of order or decree falls within the scope of this chapter.

2. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a Marine, the Marine concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The Marine will be advised that he is expected to render financial assistance to the child. If the court order or decree specifies an amount of support to be provided, the Marine will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable standard set forth in paragraph 15002.1.

3. In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the Marine shall be privately consulted and asked whether he admits either paternity of, or the legal obligation to support, the child or expected child. Prior to any such interview, the Marine should be accorded the opportunity to consult with legal counsel and encouraged to do so. If the answer is affirmative, the Marine shall be informed that he is expected to furnish support as set forth in paragraph 15002.1. Support shall be paid until the Marine is released through court order, agreement of the lawful guardian, command directed waiver per paragraph 15005.1, or adoption of the supported child by another. Marines are not relieved of providing support under this regulation until a decision to grant the request for waiver of support has been made by the GCM authority.

4. Where paternity or a legal obligation of support is admitted, the Marine should be informed of his obligation to assist in the payment of prenatal expenses. In the absence of an admission or court order, the commanding officer has no authority to determine that a servicemember is the natural parent of an illegitimate child. Consequently, in such situations, the commander is without authority to direct payment of financial support.

5. If a certified copy of a judicial order or decree of paternity or support rendered by a United States or foreign court against a former member of the Marine Corps is received, his last known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed therein of the date of



discharge and advised that the individual concerned is no longer a member of the Marine Corps.

15006. GARNISHMENT AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS

1. 42 U.S.C. § 659 provides that pay of a servicemember, active duty or retired, shall be subject to legal process brought for the enforcement against such member of legal obligations to provide child support or alimony payments. "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment.

2. Upon receipt of such legal process it will be forwarded directly to:

Defense Finance and Accounting Service  
Cleveland Center, Garnishment Operations Directorate (DFAS-CL/L)  
PO Box 998002  
Cleveland, OH 44199-8002

The letter of transmittal will state the date of service and method by which service was made. Detailed instructions to disbursing officers and commanding officers are contained in DFAS-KC 7220.31-R, chapter 7.

15007. INVOLUNTARY CHILD AND SPOUSAL SUPPORT ALLOTMENTS

1. 42 U.S.C. § 665 requires servicemembers on active duty to make involuntary allotments from pay and allowances as payment of child (or child and spousal (alimony)) support payments when the member has failed to make periodic payments under a support order and the resulting delinquency is in a total amount equal to the support payable for 2 months or longer. The amount of the allotment shall be the amount necessary to comply with the support order, and may include arrearage.

2. Notices received will be forwarded as provided in paragraph 15006.2. Because 42 U.S.C. § 665 requires that a member have the opportunity to consult with a judge advocate before an involuntary allotment is registered, all judge advocates should become thoroughly familiar with the regulations implementing this law. Detailed instructions are published in DFAS-KC 7220.31-R, chapter 7.

15008. UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

10 U.S.C. § 1408 authorizes direct payments to a former spouse of a servicemember from retired or retainer pay in response to court-ordered division of property. Court orders providing for such a division will be forwarded as set forth in paragraph 15006.2.

Questions concerning the entitlement to benefits to former spouses under this Act should be referred to CMC (MMSR-6).

15009. FOREIGN DIVORCES AND DEPENDENT BENEFITS

1. The Comptroller General of the United States, General Accounting Office (GAO), is charged with the responsibility for deciding questions relating to the proper expenditure of Federal monies. When deciding whether to grant dependent benefits to Marines, the Commandant must take into account previous opinions of the Comptroller General on the marriage validity issue. The Comptroller General has generally held that where the validity of a current marriage is dependent upon the dissolution of a prior marriage by divorce, and the divorce was of questionable validity, the current marital status of the parties is too doubtful to serve as a proper basis for any payment of public funds. These suspect divorces are generally those obtained by the casual presence of one or both parties in a foreign country for the sole purpose of the divorce. As a consequence, jurisdiction of the foreign court over the parties is illusory and consequently invalid.

2. An increasing number of Marines are having problems receiving dependent benefits because of suspect foreign divorces. Following remarriage, Marines will apply for identification cards for their spouses and children, and BAH at the "with dependents" rate. In processing their applications, NAVMC 10922 (Dependency Application) is completed requiring a statement of previous marital history. If the Marine indicates a previous marriage, substantiation is required to show that the previous marriage was lawfully dissolved. Regardless of whether the second marriage was performed in accordance with local State law, if the previous marriage was ended by a doubtful divorce, the Commandant will often not approve the dependency application. In consequence, for a dependency status to be established for a current spouse or child(ren), the Marine will be required to obtain a decree of divorce from a U.S. court of competent jurisdiction. Historically, divorces obtained in the Dominican Republic, Haiti, or Mexico are highly suspect.